

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DEBARMENT OF CONTRACTOR:

All State Maintenance Services a/k/a/
All State Landscaping and Lawn Care

**BEFORE THE
CHIEF PROCUREMENT OFFICER**

CASE NO. 2007-140

ORDER OF DEBARMENT

Posted: January 17, 2008

On March 29, 2002, the Materials Management Office (MMO) issued invitation for bids # 02-S5051 entitled Grounds Maintenance on behalf of the Department of Disabilities and Special Needs (DDSN). On May 1, 2002, MMO awarded the contract to All State Maintenance Services a/k/a/ All State Landscaping and Lawn Care (All State). On January 26, 2007, DDSN requested that the CPO resolve a contract controversy between it and All State. In order to resolve the matter, the CPO conducted a hearing on March 29, 2007. Appearing before the CPO on that date were DDSN, represented by Tana Vanderbilt, Esq., and All State, represented by Eddie Douglas, Operations Manager. During the hearing, the parties mutually agreed to settle the matter. Both parties asked the CPO to approve the settlement according to *S.C. Code Ann.* § 11-35-4230(3) and issue an Order accordingly.

On April 27, 2007, the CPO posted a Settlement Order approving the settlement reached by mutual agreement of the parties. (Copy attached) The following contained the entire settlement agreement reached:

- All State would pay DDSN \$2,350 within thirty (30) days of this order dated April 27, 2007.
- DDSN would drop its request that the CPO bar All State from further contracts with the State of South Carolina.

On August 14, 2007, DDSN reported to the CPO that All State had failed to comply with the Settlement Order. Tana Vanderbilt, General Counsel of DDSN wrote, "As of this date, the Agency has not received payment from Allstate."

After reasonable notice to all parties, the CPO scheduled a hearing for October 26, 2007. In the hearing notice to Richard Williams on behalf of All State, the CPO informed All State that the hearing would be convened to determine "why your company should not be suspended from bidding to the State of South Carolina for failure to comply with an order of the Chief Procurement Officer."

On October 26, 2007, the CPO convened the hearing. Appearing before the CPO was DDSN represented by Allen Mance, Director of Procurement. The CPO delayed the start of the hearing for thirty minutes, but All State did not appear.¹

At the hearing, Mr. Mance testified that DDSN had not received the payment of \$2,350 agreed to by All State and ordered by the CPO.

Accordingly, the CPO found probable cause to suspend All State for failure to comply with the Settlement Order of the CPO dated April 27, 2007.

The CPO scheduled a hearing for January 14, 2008 to consider whether All State should be debarred from consideration for award of contracts or subcontracts for a period of time as prescribed by the CPO.

After reasonable notice to All State of the date, time and purpose of the hearing, the CPO convened the hearing on January 14, 2008. Appearing before the CPO was DDSN represented

¹ Significant efforts were made to insure that All State received the hearing notice. Debra Martin, the CPO's assistant attempted to contact All State by telephone and mailed the hearing notice Certified Mail, Return Receipt Requested. The Certified Mail Receipt was returned indicating the All State received the hearing notice. It appears that Deborah Douglas received the letter for All State.

by Tana Vanderbilt, Esq., and Allen Mance, Director of Procurement. Again, the CPO delayed the start of the hearing, but All State did not appear.²

At the hearing, Ms. Vanderbilt testified that DDSN had not received the payment of \$2,350 agreed to by All State as ordered by the CPO after agreement of the parties.

Regarding suspension and debarment, the Consolidated Procurement Code reads in part:

(34) "Suspension" means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or Inadequacy of performance which may lead to debarment. [11-35-310]

After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the appropriate chief procurement officer has the authority to debar a person for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the State and there is probable cause for debarment. The appropriate chief procurement officer also may suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. The period of debarment or suspension is as prescribed by the appropriate chief procurement officer.

(2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to:

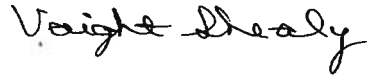
(e) violation of an order of a chief procurement officer or the Procurement Review Panel;
[11-35-4220]

ACCORDINGLY, the CPO finds that adequate cause exists for the debarment of All State Landscaping and that it is in the best interest of the State that it be debarred for violation of the Order of the CPO dated April 27, 2007 and therefore, pursuant to the *S.C. Code Ann.* § 11-

² Once again, significant efforts were made to insure that All State received the hearing notice. Debra Martin, the CPO's assistant, mailed the hearing notice Certified Mail, Return Receipt Requested. The Certified Mail Receipt

35-4220(2)(e), All State Landscaping and Lawn Care is hereby debarred from being considered for award of contracts or subcontracts with the State for a period of two years effective from the date of this order. My decision as to the length of the debarment is affected by the following facts that play a role: (a) All State agreed to the settlement, (b) All State failed to make payment or offer any explanation, and (c) All State didn't respond to the hearing notice either time.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Voight Shealy", positioned above a horizontal line.

VOIGHT SHEALY
Chief Procurement Officer

Columbia, South Carolina
January 17, 200

was returned indicating that All State received the hearing notice. It appears that Deborah Douglas accepted the mailed notice for All State.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2006 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at <http://www.mmo.sc.gov/MMO/legal/MMO-legal-decisions-query.phtm>

STATE OF SOUTH CAROLINA)

BEFORE THE
CHIEF PROCUREMENT OFFICER

COUNTY OF RICHLAND)

SUSPENSION OF BIDDER:)

CASE NO. 2007-105 II

ORDER OF SUSPENSION

All State Landscaping & Lawn Care)

POSTED:

NOVEMBER 2, 2007

On March 29, 2002, the Materials Management Office (MMO) issued invitation for bids # 02-S5051 entitled Grounds Maintenance on behalf of the Department of Disabilities and Special Needs (DDSN). On May 1, 2002, MMO awarded the contract to All State Maintenance Services (All State). On January 26, 2007, DDSN requested that the CPO resolve a contract controversy between it and All State. In order to resolve the matter, the CPO conducted a hearing on March 29, 2007. Appearing before the CPO were DDSN, represented by Tana Vanderbilt, Esq., and All State, represented by Eddie Douglas, Operations Manager. During the hearing, the parties mutually agreed to settle the matter. They ask the CPO to approve the settlement according to S.C. Code Ann. Section 11-35-4230(3).

On April 27, 2007, the CPO posted a Settlement Order approving the settlement reached by mutual agreement of the parties. (Copy attached) The following contained the entire settlement agreement reached:

- All State would pay DDSN \$2,350 within thirty (30) days of this order dated April 27, 2007.
- DDSN would drop its request that the CPO bar All State from further contracts with the State of South Carolina.

On August 14, 2007, DDSN reported to the CPO that All State had failed to comply with the Settlement Order. Tana Vanderbilt, General Counsel of DDSN wrote, "As of this date, the Agency has not received payment from Allstate."

The CPO scheduled a hearing for October 26, 2007. In the hearing notice to Richard Williams, the CPO informed All State that the hearing would be convened to determine "why your company should not be

suspended from bidding to the State of South Carolina for failure to comply with an order of the Chief Procurement Officer.”

On October 26, 2007, the CPO convened the hearing. Appearing before the CPO was DDSN represented by Allen Mance, Director of Procurement. The CPO delayed the start of the hearing for thirty minutes, but All State did not appear.¹

At the hearing, Mr. Mance testified that DDSN had not received the payment of \$2,350 agreed to by All State and ordered by the CPO.

Accordingly, the CPO finds probable cause to suspend All State for failure to comply with the Settlement Order of the CPO dated April 27, 2007.

Regarding suspension, the consolidated Procurement Code reads:

(34) “Suspension” means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment. [11-35-310]

After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the appropriate chief procurement officer has the authority to debar a person for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the State and there is probable cause for debarment. The appropriate chief procurement officer also may suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. The period of debarment or suspension is as prescribed by the appropriate chief procurement officer.

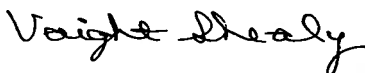
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(e) violation of an order of a chief procurement officer or the Procurement Review Panel;
[11-35-4220]

¹ Significant efforts were made to ensure that All State received the hearing notice. Deborah Martin, the CPO’s assistant attempted to contact All State by telephone and mailed the hearing notice Certified Mail, Return Receipt Requested. The Certified Mail Receipt was returned indicating the All State received the hearing notice. It appears that Deborah Douglas received the letter for All State.

ACCORDINGLY, pursuant to § 11-35-4220(2)(e) All State Landscaping and Lawn Care is suspended from consideration for award of contracts or subcontracts from the State of South Carolina and all of its agencies and institutions pending a hearing to determine if All State² should be debarred from receiving any contracts with the State.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Voight Shealy", positioned above a horizontal line.

VOIGHT SHEALY
Chief Procurement Officer

Columbia, South Carolina
November 2, 2007

² Upon proper notice, any debarment hearing may also address the possible debarment of any principles and affiliates of All State.
[11-35-4220(6)].

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

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STATE OF SOUTH CAROLINA)	BEFORE THE
)	CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	
CONTRACT CONTROVERSY:)	
)	CASE NO. 2007-105
Disabilities & Special Needs)	
)	ORDER
v.)	
)	
All State Landscaping & Lawn Care)	APPROVING SETTLEMENT
)	
Materials Management Office)	
<u>Contract No. 02-S5051</u>)	APRIL 27, 2007

This matter comes before the Chief Procurement Officer (CPO) pursuant to S.C. Code Ann. § 11-35-4230. The Department of Disabilities and Special Needs (DDSN) requested that the CPO resolve a contract controversy between it and All State Landscaping & Lawn Care (All State). In order to resolve the matter, the CPO conducted a hearing on March 29, 2007. Appearing before the CPO were DDSN, represented by Tana Vanderbilt, Esq., and All State, represented by Eddie Douglas, Operations Manager. During the hearing, the parties mutually agreed to settle the matter. They ask the CPO to approve the settlement according to S.C. Code Ann. Section 11-35-4230(3).

The following contains the entire settlement agreement reached.

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- DDSN will drop its request that the CPO bar All State from further contracts with the State of South Carolina.

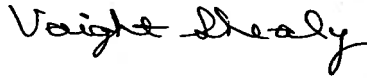
All parties to the contract controversy have settled the dispute by mutual agreement. The settlement terms as stated above are before me for consideration.

The CPO understands that all parties have considered the settlement carefully, understand the terms, and realize its consequences.

ACCORDINGLY, pursuant to § 11-35-4230(3) the settlement reached by mutual agreement of the parties is approved and case number 2007-105 is closed.

FURTHER, all claims pending before the CPO are dismissed.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Voight Shealy", is positioned above a horizontal line.

VOIGHT SHEALY
Chief Procurement Officer

Columbia, South Carolina
April 27, 2007